

COUNCIL MINUTES
TIGARD CITY COUNCIL MEETING
February 22, 2005

Mayor Dirksen called the meeting to order at 6:30 p.m.

Council Present: Mayor Dirksen; Councilors Harding, Sherwood, Wilson, and Woodruff.

- STUDY SESSION

- > ADMINISTRATIVE ITEMS

- a. Mayor's Agenda was distributed. A copy of this agenda is on file in the City Recorder's office.
 - b. Council consensus was to rearrange the business meeting agenda so that the Ash Creek item (No. 10 on the agenda) will be heard by the City Council after Item No. 4.
 - c. Interim Finance Director Imdieke noted a title change for Agenda Item No. 8, the title should read: PUBLIC HEARING OF THE CITY COUNCIL/LCRB TO AMEND THE TIGARD MUNICIPAL CODE TO REFLECT CHANGES IN PUBLIC CONTRACTING RULES AND DECLARE AN EMERGENCY
 - d. Interim City Manager Prosser referred to and briefly reviewed a February 22, 2005, memorandum from Interim Finance Director Imdieke regarding an update on PERS rates. A copy is on file in the City Recorder's office.
 - e. Information on "Reasons to Support SB 730" was distributed to the Council. A copy is on file in the City Recorder's office.
 - f. Interim City Manager Prosser advised Council of an upcoming Brown Bag Lunch, Noon, March 4 in the Town Hall for former City Manager Bill Monahan. Mr. Monahan thanked the Council for asking him about a City-sponsored reception in his honor; however, he advised Interim City Manager Prosser that he would not want anything other than the lunch.
 - g. City Council received information (copy is on file in the City Recorder's office) about an MPAC Symposium on Annexation – February 23, 2005 – 5-7 p.m. Metro Council Chambers – 600 NE Grand Avenue, Portland, Oregon
 - h. Calendar Review
 - February 28: Capital Improvement Program Tour 3-5 p.m.; Meet in the Permit Center Lobby
 - March 1: Special Council Meeting – 6:30 p.m. – Town Hall
 - March 8: Council Business Meeting – 6:30 p.m. – Town Hall

- March 15: Council Workshop Meeting – 6:30 p.m. – Town Hall
- March 22: Council Business Meeting – 6:30 p.m. – Town Hall
- March 29: 5th Tuesday Council Meeting – 7 p.m. – Water Auditorium

> CITY COUNCIL ORIENTATION

- City Attorney Ramis reviewed the following topics:

1. Municipal Authority
2. Meeting Procedure and Public Meeting Law
3. Public Records and Public Retention

A copy of the outline of his presentation is on file in the City Recorder's office.

> UPDATE ON COMMUTER RAIL URBAN RENEWAL FEASIBILITY STUDY (Schedule and status of Downtown)

Community Development Director Hendryx updated the City Council on the status of the Washington County feasibility study analysis for the commuter rail urban renewal effort. Participants in this effort include the cities of Tigard and Beaverton, Washington County, and Tualatin Valley Fire and Rescue and the Tualatin Hills Parks and Recreation District. Mayor Dirksen is on the Policy Advisory Group with Councilor Sherwood attending meetings as an alternate. Community Development Director Hendryx advised the Council had received a briefing in January on this matter.

Community Development Director Hendryx overviewed the areas of main concerns, including:

- governance
- maintaining Tigard control (funding)
- how this effort relates to the Downtown Planning effort
- financial impacts to the General Fund
- public outreach

Mayor Dirksen and Councilor Sherwood commented on the County effort noting this was also related to the 217 corridor revitalization effort. There will be a need to incorporate the Downtown Plan. Tigard is considered an important component to the multi-jurisdictional effort. There was discussion on the need for this matter to be placed before voters and the timeline of what needs to be done for the May 2006 election.

Discussion then followed on the Downtown Plan. Community Development Director Hendryx distributed a chart entitled "Downtown Improvement Plan

Phases." A copy is on file in the City Recorder's office. The chart identified three phases:

1. Plans
2. Tools
3. Build

City Attorney Ramis noted the process should include ample opportunity for public involvement. There was discussion on process, which would include an opportunity for other taxing entities to review, public notice, a Planning Commission public hearing, and a City Council public hearing.

Requirements for urban renewal plans were discussed and Community Development Director Hendryx distributed language from ORS 457.085 – "Urban renewal plan requirements; accompanying report; contents; approval required." A copy is on file in the City Recorder's office.

Another City Council discussion, Community Development Director Hendryx advised, is scheduled for March.

In response to a question from Councilor Woodruff about tangible results that could be expected soon for the downtown, Interim City Manager Prosser advised that some capital improvement projects have been identified and recommended in the capital improvement program (CIP) for the upcoming fiscal year.

Councilor Wilson requested that when the consultant comes to the City Council to talk about urban renewal, that the consultant addresses how projects are selected for an urban renewal district.

- EXECUTIVE SESSION: Not held

The Study Session concluded at 7:28 p.m.

1. BUSINESS MEETING

- 1.1 Mayor Dirksen called City Council & Local Contract Review Board to order at 7:35 p.m.
- 1.2 Council Present: Mayor Dirksen; Councilors Harding, Sherwood, Wilson, and Woodruff.
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports: None.
- 1.5 Call to Council and Staff for Non-Agenda Items

Mayor Dirksen asked all present to note that the public hearing for Ash Creek Estates, Agenda Item No. 10, would be moved forward to Agenda Item No. 5.

2. CITIZEN COMMUNICATION (Two Minutes or Less, Please)

- Ken Henschel, 14530 SW 144th Avenue, Bull Mountain, 97224, addressed some comments he said were made at the last meeting regarding CPO4B. It was referred to at that time as the County Planning Organization 4B; it is the *Citizen Participation* Organization 4B. He clarified that this is not an official County organization; rather, it is sanctioned by the County. The organization exists to educate people within the CPO's boundary, which includes areas of Tigard as well as unincorporated Washington County. Issues affecting livability – especially land use are covered. Occasionally, the CPO membership decides to provide local government with information on where they stand on certain issues.

Mr. Henschel said he again invited the City of Tigard to participate in those meetings where it would be appropriate. Citizens would like representation from the City of Tigard to speak on issues that affect them.

- Alice Ellis Gaut, 10947 SW Chateau Lane, Tigard, OR 97244, stated she was before the City Council on behalf of the Tualatin Riverkeepers to invite the City Council, staff, and members of the public to a restoration tree planting project on Saturday, February 26, 2005, 9 a.m. – 1 pm. This project will take place on the Metro property, next to the new library property. The property consists of 11 acres of greenspace that Metro has purchased. She noted this is the property for which there is a proposed road to cross and she urged everyone to come see this “beautiful and special place and observe what we have there...” She said she wanted people to get a feeling of what it would mean to put a road through this property – what it would do to the habitat and vegetation. Ms. Gaut distributed an invitation to the City Council.
- John Frewing, 7110 SW Lola Lane, Tigard, OR 97223, noted that at the Parks Board meeting last week, Supervisor Dan Plaza presented a new proposal for parks acquisition as part of the CIP for the year 2005-2006. Prior public versions of the CIP showed no such expenditures. Mr. Plaza's proposal included the use of \$1.3 million in parks system development charges (SDC's), which have been collected from new construction within the Tigard City limits over the past years, for the purpose of buying ten acres outside the City limits on Bull Mountain. Mr. Frewing said that no park sites have been acquired inside the City during the past several years when this \$1.3 million has accumulated. The Board asked why funds raised inside City limits are not being used for

parks acquisition inside the City limits, which is seriously park-area deficient? Mr. Frewing said that Mr. Plaza said that the City policy has been that acquisitions only occur within the City, but that policy might be changing.

Mr. Frewing said that when Mr. Plaza was asked why these funds would not be spent in Tigard, Mr. Plaza replied, "That's the way it is." Mr. Frewing said that when Mr. Plaza was asked to suggest properties, the only plan Mr. Plaza had identifying potential parks was the white paper developed last year for Bull Mountain annexation. Mr. Frewing said his query to the City Council was threefold:

1. Why doesn't Tigard have a plan for parks acquisition within our City limits?
2. What is Tigard's policy on expenditure of Park SDC funds and what criteria are used? Mr. Frewing said he did not know of any policy adopted by City Council resolution or ordinance.
3. What citizen participation opportunity will be available as any change to this policy is developed?

Mr. Frewing said that in arguing against spending Tigard Parks SDC funds for acquisition outside the City, he reminded the City Council that the Development Code, 18.350.100 B.2. clearly states that for Planned Developments, not for subdivisions, the City "...may require additional open space dedication..." Mr. Frewing said that in view of the fact that Tigard Parks SDCs are not being collected on Bull Mountain, he urged that the City Council use "this provision energetically to acquire park space there where the City already has planning authority."

Mr. Frewing said he wanted to make an apology that stems from comments he made two weeks ago. He said he testified about a potential gift of some five acres to Tigard. He said that Tigard staff was informed of this potential gift, saying that Parks Supervisor Dan Plaza confirmed it to him in the summer of 2003. Later Mr. Plaza e-mailed Mr. Frewing saying it was not him and he felt that Mr. Frewing owed him a public apology. Mr. Frewing said, "I make that apology." Mr. Frewing said he now believed it was not Dan Plaza, but Planner Morgan Tracy, who confirmed this potential gift to Mr. Frewing. Mr. Frewing said that "Morgan told me then that the offer was forwarded to Parks and nothing more was heard of it. Perhaps that's why I thought Dan was involved. I do want to apologize to Dan Plaza for apparently hurting his feelings. But, I never did say it was Dan who turned down the offer of free parks. Dale Richards apparently did confirm this offer to Tigard in remarks by his attorney two weeks ago, but the story doesn't quite end there. At a Parks Board meeting last week, Dan Plaza mentioned to the Board that both the

Planning Commission and the City Council had been informed of this potential gift in the summer 2003. Now, all of you weren't on the Council, obviously, at that time. My question to you is, 'Who on Tigard staff, Planning Commission, or City Council considered this gift of free parks or open space and declined the offer and why. It is of more than historical interest as you have stated a major goal for this year of acquiring more parks and open space and the process which you use is of current public interest."

Mayor Dirksen said he could answer a couple of items presented by Mr. Frewing; other items will need research in order to be answered. Mayor Dirksen said the City Council, during its recent goal-setting discussion, recognized the limited amount of properties available for parks inside the City. City Council told the staff not to limit themselves to potential park property inside the City limits; but look inside the urban planning area as well. It is anticipated that eventually those areas will be inside the City and those areas could be developed as parks.

Councilor Wilson added that half of Bull Mountain is in the City, annexed over the years in numerous subdivisions. City Council anticipates more property on Bull Mountain to come in. The City Council's feeling was, "why wait until it's fully developed, when there is nothing left." Councilor Wilson agreed there were other park deficient areas in the City, but it has long been recognized that the Bull Mountain area – that quadrant of the City – is one of the most park-deficient areas, and he said he thought the Parks Master Plan noted this deficiency (although he said he would need to research this).

Councilor Woodruff agreed that the City Council has given direction to the staff and the Parks Board to begin to research aggressively what the City might do with the increased SDC funds. Interim City Manager Prosser clarified that the Capital Improvement Program will be before the City Council in March for review. Councilor Woodruff noted the City Council would review and make decisions about how to use those funds.

Councilor Sherwood noted that Tigard citizens in the Bull Mountain area have noted that they have paid SDC's and questioned why there were no parks in that area. These areas in Tigard are all developed with no land available for park land.

Mr. Frewing responded that the Parks Board commented last week that over the years there has been a lot of development on the "flat land" as well and yet the money that appears to be set forth in this 2005-2006 CIP Program is entirely on Bull Mountain. Mr. Frewing said, "I think the Parks

Board, and I'm putting words in their mouth – maybe shouldn't – they felt it should be spent over all of the City."

Councilor Sherwood told Mr. Frewing that the City Council has not had any meetings with the Parks Board. This Board is to bring recommendations to the City Council. She said that for Mr. Frewing to make an assumption "that we have already done that, is not fair, because we really haven't" Mr. Frewing said, "I'll hope you consider the whole City."

Councilor Wilson commented on open spaces, which are left over from development. He noted he was on the Planning Commission for about eight years prior to his service on the City Council. Councilor Wilson said he remembered PUD's with left over parcels and it was the City's policy at that time not to take those. Primarily, he thought this policy was implemented because of additional maintenance costs when, in fact, they would be cared for at the expense of the homeowners instead of the expense of the City. The end result was the same, the open space was preserved, except that it wasn't open for public access. Councilor Wilson said he doesn't know that this policy as changed, and he was not sure it should be changed. However, he said it would be worth reviewing and noted the great deal of concern about disappearing open space.

Councilor Woodruff noted he was concerned when Mr. Frewing "...made that comment at the last meeting. I guess I'm happy to hear that it was brought before the Council...before my time...Anytime that there's a possibility of donation of land, that Council be made aware of that."

Mr. Frewing advised he was sympathetic to the fact that there's probably some land that the City shouldn't pick up – it's dangerous or in someway not useable at all. But, there's a lot of other opportunities to gain open space, not necessarily soccer or baseball fields, through this provision in the Code. He said that is what he is "urging the City Council to do where it is feasible."

- Robert Ward, 7162 SW Barbara Lane, Tigard, Oregon, spoke to the City Council about his concern for livability with the increasing "densification" He noted there seems to be little sympathy for homeowners. He referred to 300' towers on Mcadam that were recently approved. He said citizens are speaking up more and said, "Don't forget about livability." Councilor Wilson noted the timeliness of Mr. Ward's remarks. Councilor Wilson advised that the City Council would be discussing issues with Metro later on this agenda. In addition, the Planned Development ordinance is under review due to the concerns expressed about this ordinance.

Discussion followed with regard to the Planned Development ordinance, which Mr. Ward said was confusing. Mayor Dirksen noted there are several issues to be considered on land use matters, including land use laws and specific court cases, which take away flexibility. Councilor Sherwood noted the City of Tigard will be performing a Comprehensive Plan Update and asked Mr. Ward to "stay tuned and stay involved."

3. CONSENT AGENDA: Youth Advisory Council President Rob Williams reviewed the Consent Agenda:

- 3.1 Approve Council Minutes for January 18, and 24, 2005
- 3.2 Approve Budget Amendment No. 9 to the Fiscal Year 2004-05 Budget to Increase Appropriations in the Library Department for Additional Hours of Operation to Re-Open the Library on Sundays – Resolution No. 05-09

A RESOLUTION APPROVING BUDGET AMENDMENT #9 TO THE FY 2004-05 BUDGET TO INCREASE APPROPRIATIONS IN THE LIBRARY DEPARTMENT FOR ADDITIONAL HOURS OF OPERATION TO RE-OPEN THE LIBRARY ON SUNDAYS

- 3.3 Local Contract Review Board:
 - a. Award Contract for the Construction of North Dakota Street Pedestrian Crosswalk
 - b. Approve Amendment to Engineering Services Contract for Murray Smith & Associates, Inc., for Design of a 550-Foot Zone Reservoir No. 2

Councilor Harding asked that Agenda Item 3.2 be removed for separate discussion.

Motion by Councilor Wilson, seconded by Councilor Sherwood, to approve the Consent Agenda without Item No. 3.2.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

Discussion followed on Item 3.2:

- 3.2 Approve Budget Amendment No. 9 to the Fiscal Year 2004-05 Budget to Increase Appropriations in the Library Department for Additional Hours of Operation to Re-Open the Library on Sundays – Resolution No. 05-09

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Councilor Harding noted her concerns about using bequest dollars for staffing. She also advised of her concerns with the wording on a sign placed at the entrance of the library regarding reduced services because the levy did not pass. She advised she was not in agreement with the proposed resolution as presented to the City Council. She also noted she did not realize that consensus had been reached by the City Council on this item and was surprised to see it on the Consent Agenda.

Councilor Woodruff agreed that it is unusual to use bequest dollars this way; however, he pointed out that the Tigard family was willing to do this which was why he supports this action.

Councilor Harding expressed concern about opening the library on Sundays for a period of time and then needing to shut it down later.

Councilors Sherwood and Wilson made statements in support of Councilor Woodruff's idea that continuation of Sunday hours could be sorted out during the Budget process. During the discussion, it was pointed out that the dollars saved from library construction cannot be used for operation expenses (legal requirements).

Motion by Councilor Woodruff, seconded by Councilor Sherwood, to approve consent Agenda Item 3.2 as presented.

The motion was approved by a majority vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	No
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

4. RECOGNIZE OUTSTANDING CITIZEN ASSISTANCE

Police Chief Dickinson presented the staff report on this item. He described the activity of several citizens who assisted the Tigard Police Department:

- Erik Ramseyer – for assistance resulting in the arrest of a theft and robbery suspect on December 22, 2004.
- Signe Martin – for assistance resulting in the arrest of a motorist driving under the influence on December 4, 2004.
- Tanner Ellenson – for assistance resulting in the arrest of a hit and run motorist that struck a pedestrian on December 21, 2004.
- Trever Ellenson – for assistance resulting in the arrest of a hit and run motorist that struck a pedestrian on December 21, 2004.

Agenda Item No. 10 was considered at this point in the meeting.

5. CONSIDER INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF TIGARD AND TRIMET FOR THE ASSIGNMENT OF A FULL-TIME POLICE OFFICER TO THE TRANSIT POLICE DIVISION

Police Chief Dickinson presented the staff report on this item. Police Chief Dickinson responded to questions from Councilor Harding regarding what TriMet would fund and what costs would be borne by the City. The advantages and disadvantages are enumerated in the staff report; a copy is on file in the City Recorder's office.

Motion by Councilor Sherwood, seconded by Councilor Harding, to approve the Intergovernmental Agreement.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

6. CONSIDER BUDGET AMENDMENT NO. 8 TO THE FISCAL YEAR 2004-05 BUDGET TO ADD A FULL-TIME POLICE OFFICER POSITION AND INCREASE APPROPRIATIONS FOR FUNDING OF THIS POSITION

Police Chief Dickinson presented the staff report on this item. A budget amendment is now needed with the City Council's approval of the

Intergovernmental Agreement between the City of Tigard and TriMet for the assignment of a full-time police officer to the Transit Police Division. (see Agenda Item No. 5)

Motion by Councilor Wilson, seconded by Councilor Sherwood, to adopt Resolution No. 05-10.

RESOLUTION NO. 05-10 – A RESOLUTION APPROVING BUDGET AMENDMENT #8 TO THE FY 2004-05 BUDGET TO ADD A FULL-TIME POLICE OFFICER POSITION AND INCREASE APPROPRIATIONS FOR FUNDING OF THIS POSITION

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

7. **DISCUSS A PROPOSED RESOLUTION TO SUPPORT COLLABORATION WITH WASHINGTON COUNTY JURISDICTIONS REGARDING PROPOSED CHANGES TO GOAL 14 (URBANIZATION) AND THE URBAN GROWTH BOUNDARY ADMINISTRATIVE RULES, AND TO SUPPORT LOCAL CONTROL OVER THE LAND-USE PROCESS**

Interim City Manager Prosser advised that staff developed a draft resolution to attempt to address some of the issues discussed by Council previously.

Council discussion followed. Mayor Dirksen said that in reviewing the draft resolution he was not sure the issues were addressed. He noted concerns that the wording was not strong enough, but upon consideration he suggested that what might be needed is more than one resolution. The proposed resolution really addresses more the issue of collaborating with Tualatin and other cities. The City might want to consider the proposed resolution or a modification of the resolution at this time and then consider further steps to take in the future which addresses more directly the concerns by the City of Tigard.

Councilor Sherwood asked if Senate Bill 730 would address some of the concerns. Mayor Dirksen said the Senate Bill would address issues at a state level, but he didn't think it would conflict with the proposed action before the City Council. Councilor Sherwood suggested the Council consider a resolution supporting Senate Bill 730. Mayor Dirksen thought this might be something to consider in the future.

Councilor Wilson said he would be uncomfortable considering any resolution at this time. He noted this was the first opportunity for the Council to discuss Metro at all, other than the discussion at the previous goal-setting session. He said, "We're not happy. I'd rather discuss things at a policy level...what are our problems. While I appreciate our relationship with Tualatin...I think that our issues are slightly different and I'm not sure that they frame the problem entirely as it should be...I would rather just throw it out for discussion...about what our issues are."

Mayor Dirksen noted that Tualatin has requested another meeting between their Mayor and other cities to continue this discussion. He said that, "Perhaps, through that process we could further clarify what Tualatin would ask of us..." and then the Tigard Council could consider a resolution in support. Then, the Mayor suggested, in a separate discussion, the Council could discuss the issues pertinent to the City of Tigard. The Mayor said that one of the questions the City of Tualatin is asking is, "Are cities interested in continuing this discussion?"

Councilor Sherwood noted one of the biggest issues for Tigard is density. She said she thought the Mayor should continue with the discussion with Tualatin. She questioned whether a resolution would be the appropriate way to show support for Tualatin.

Interim City Manager Prosser said staff had understood there might be a timing issue; however, he was hearing from Council that more discussion is needed. He suggested looking at future tentative agendas to schedule a longer discussion at a workshop meeting to discuss and identify policy issues. After that, staff could redraft the resolution for Council consideration. Council agreed with Mr. Prosser to schedule this item for more discussion.

Mayor Dirksen will continue to go to the Tualatin meetings. He asked Councilor Harding if she would be available to attend some of the Tualatin meetings, which are usually held during business hours. She confirmed that she would be available.

Mayor Dirksen said that one of the outcomes the City of Tigard is looking for is for more flexibility when it comes to redrafting the Comprehensive Plan. Councilor Wilson said, "I think we need more than a change of heart at Metro. We need a Charter change or a new state law...because personalities have come and gone...it's structural. It seems almost really unlikely that much is going to change by the time we get our Comp Plan done...I'm a little uncomfortable in waiting two months to even discuss in broad terms our frustrations."

Mr. Prosser reviewed the tentative agenda with the Council and with some rearrangement of agenda items; this topic was scheduled for further discussion at the March 15, 2005, workshop meeting.

8. PUBLIC HEARING (CITY COUNCIL/LOCAL CONTRACT REVIEW BOARD) – TO AMEND THE TIGARD MUNICIPAL CODE TO REFLECT CHANGES IN PUBLIC CONTRACTING RULES AND DECLARE AN EMERGENCY

Interim Finance Director Imdieke introduced this item.

- a. Mayor Dirksen, as the LCRB Chair, opened the public hearing.
- b. Declarations or Challenges: None
- c. Staff Report: Finance Department Buyer Barrett reviewed the staff report; a copy is on file in the City Recorder's office. The proposed ordinance provides for the transition to new Public Contracting Rules, revises certain provisions in the Tigard Municipal Code relating to contracting authority, authorizes the adoption of revised Public Contracting Rules by resolution, and declares a state of emergency to ensure any revised Public Contracting Rules will be in effect in the appropriate time frame.
- d. Public Testimony: None
- e. Council/LCRB discussion followed. In response to Councilor/Board Member Harding, Mr. Barrett and Mr. Imdieke explained the need for the emergency clause on the ordinance. If the ordinance is not adopted by March 1, the City of Tigard purchasing process would fall under the Attorney General's Model Public Contracting Rules.

City Attorney Ramis also clarified the provisions of the ordinance that allow for some details on purchasing process to be done by a resolution; this would provide flexibility for revising the Public Contracting Rules.

- f. The staff recommendation was to approve the proposed ordinance.
- g. Mayor/LCRB Chair Dirksen closed the public hearing.
- h. Council/LCRB Consideration:

Motion by Councilor/Board Member Sherwood, seconded by Councilor/Board Member Woodruff, to adopt Ordinance No. 05-05,

ORDINANCE NO. 05-05 -- AN ORDINANCE AMENDING THE TMC TO REFLECT CHANGES IN THE PUBLIC CONTRACTING RULES AND DECLARE AN EMERGENCY

The motion was approved by a unanimous vote of Council/LCRB Members present:

Mayor/Board Member Dirksen:	Yes
Councilor Harding/Board Member:	Yes
Councilor Sherwood/Board Member:	Yes
Councilor Wilson/Board Member:	Yes
Councilor Woodruff/Board Member:	Yes

9. LOCAL CONTRACT REVIEW BOARD PUBLIC HEARING – TO CONSIDER A RESOLUTION REVISING PUBLIC CONTRACTING RULES, FINDINGS SUPPORTING THE REVISED PUBLIC CONTRACTING RULES, AND A REVISED PURCHASING AND CONTRACTING MANUAL

- a. Mayor Dirksen/LCRB Chair opened the public hearing.
- b. Declarations or Challenges: None
- c. Staff Report: Finance Department Buyer Joe Buyer presented the staff report. The issue before the Council/LCRB was to consider approval, by resolution, of revised Public Contracting Rules, the supporting findings for the revised Public Contracting Rules, and the establishment of a revised Purchasing Contracting Manual.
- d. Public Testimony: None
- e. Staff Recommendation: Approve the proposed resolution presented to the City Council.
- f. Mayor/LCRB Chair closed the public hearing.
- g. Council Consideration: Local Contract Review Board Resolution No. 05-01

Motion by Councilor/Board Member Wilson, seconded by Councilor/Board Member Harding, to adopt LCRB Resolution No. 05-01.

LCRB RESOLUTION NO. 05-01 -- A RESOLUTION ADOPTING REVISED PUBLIC CONTRACTING RULES, RELATED FINDINGS, AND REVISED PURCHASING AND CONTRACTING MANUAL.

The motion was approved by a unanimous vote of Council/LCRB Members present:

Mayor/Board Member Dirksen:	Yes
Councilor Harding/Board Member:	Yes
Councilor Sherwood/Board Member:	Yes
Councilor Wilson/Board Member:	Yes
Councilor Woodruff/Board Member:	Yes

10. PUBLIC HEARING (QUASI-JUDICIAL) ASH CREEK ESTATES – LAND USE BOARD OF APPEALS (LUBA) REMAND - SUBDIVISION (SUB) 2003-00010/PLANNED DEVELOPMENT REVIEW (PDR) 2003-00004/ZONE CHANGE (ZON) 2003-00003/SENSITIVE LANDS REVIEW (SLR) 2003-00005/ADJUSTMENT (VAR) 2003-00036/ADJUSTMENT (VAR) 2003-00037

The following description was read by the Mayor at the February 8, 2005, City Council Meeting:

ITEM ON REMAND: The State Land Use Board of Appeals (LUBA) has remanded City Council's approval of a 29-lot Planned Development Subdivision on 9.3 acres and associated Zone Change, Sensitive Lands, and Adjustment reviews for additional findings to support their decision. This hearing is limited to the four specific assignments of error which are generally: 1) The City's acceptance of lower "K" values in relation to the proposed vertical sag on SW 74th and demonstration that the City Engineer is authorized to approve such deviations to adopted street standards; 2) The requirement that the applicant prepare and

submit a tree plan that identifies the size, species, and location of trees on the site, provide a removal plan, protection plan, and mitigation program in accordance with Tigard Community Development Code (TCDC) Chapter 18.790; 3) Revised findings are required for the proposed curb tight sidewalks on SW 74th Avenue and also for the cul-de-sac standards to address the relevant criteria of TCDC Chapter 18.370.C.11; and 4) Additional findings related to the landscape protection criteria of TCDC Chapter 18.745.030.E. A full copy of LUBA's Final Opinion and Order can be obtained from City Hall at cost, or is also available online at <http://luba.state.or.us/pdf/2004/aug04/03194.htm>.

LOCATION: 9750 SW 74th Avenue; WCTM 1S125DC, Tax Lots 300 and 400.

ZONE: R-4.5: Low-Density Residential District. The R-4.5 zoning district is designed to accommodate detached single-family homes with or without accessory residential units at a minimum lot size of 7,500 square feet.

Duplexes and attached single-family units are permitted conditionally. Some civic and institutional uses are also permitted conditionally. **APPLICABLE**

REVIEW CRITERIA: Tigard Community Development Code Chapters 18.370, 18.745, 18.790 and 18.810.

- a. Mayor Dirksen noted this was a continuation of the Public Hearing opened on February 8, 2005.
- b. City Attorney Ramis noted that the City Council closed the oral portion of the testimony at the end of the last public hearing on this item. The City Council allowed a schedule under which participants in the hearing could submit additional written comments. The Council has received copies of the comments for review. City Attorney Ramis noted the City Council was at the stage of the hearing process wherein the City Council is to

deliberate. He noted that although the hearing is closed, the Council has new information; if the Council has any questions it would be within proper procedure for Council members to ask questions of staff. Staff may respond so long as no new information or issues are injected into the process through that interchange. If the City Council was to ask a question that resulted in new factual information, the City Council would need to create an opportunity for people to respond.

- c. City Attorney advised there was no need for declarations or challenges at this point in the proceedings unless there has been any ex parte communications since the last hearing on the subject.

Councilor Woodruff advised he made a site visit.

City Attorney advised that one communication came into the City Council from the City Parks and Building manager after the close of the period stipulated as a deadline for written testimony to be submitted to the City Council. City Attorney Ramis said the Council should not consider this communication dated February 18 during its deliberations.

- d. Summation by Community Development Department Staff: Associate Planner Tracy advised that since the February 8, 2005, City Council hearing, staff has received two written testimonies: one from John Frewing with several exhibits and the second from Alice Ellis Gaut. Those items raised several issues. Associate Planner Tracy said what it was important to realize is that LUBA has asked the City Council to consider four specific issues. The testimony that the City Council received covered a much broader spectrum of issues than what it was being asked to consider by LUBA. Since the written testimonies were received, a rebuttal by the applicant was submitted, which concisely addressed the issues before the City Council. The issues were limited to the authority for the City Engineer to deviate from street design standards in accepting a lower K value for the vertical sag; the lack of a tree plan in the original application; create the findings in support of granting the curb-tight sidewalks, cul de sac length, cul de sac number of units; and evidence in support to demonstrate the landscape protection criteria were being met. The applicant submitted the information in rebuttal addressing those applicable criteria in the Development Code and responding to the issues that LUBA raised. Based on the findings in the staff report, staff believes all the applicable criteria have been satisfied and there is no basis for denial. Associate Planner Tracy advised staff welcomes and would be happy to clarify any issues that the City Council may have with respect to the application or testimony.

In response to a question from Mayor Dirksen, Associate Planner Tracy advised staff recommends that the City Council adopt the proposed resolution, which had been submitted in the City Council meeting packet as Attachment 4.

- e. Councilor Wilson noted the staff report indicated that originally the applicant requested an adjustment on the street with regard to the K value. The applicant was told the adjustment was not necessary because the slope did not exceed a certain percentage over a certain number of feet. Councilor Wilson said that as he reviewed the adjustment criteria, it is not limited to slope and the criteria for granting the adjustment appears to easily be met with the circumstances that are present. Councilor Wilson was wondering why that information was not apparent.

Associate Planner Tracy responded that there was a distinction made in the Development Code. Certain criteria in the Development Code relating to streets are very specific. In Title 18 (the Development Code) there are standards relating to the grade – the amount of slope on a street for a certain amount of feet. This is different from K value, which is a design concept used in engineering for the degree of a curve, sag, or bend in the road. There are a number of criteria for designing streets that are not part of the Development Code. The criteria purposefully excepted from the Development Code are made part of the City of Tigard's design standards for streets – they are not a land use issue. LUBA has accepted the fact that no adjustment was required for the K value because it is not part of the Development Code. The question from LUBA was, did the City Engineer have the authority to approve something that does not meet the City of Tigard's design standards for streets? Associate Planner Tracy said that in looking at the design standards for streets, which is a separate document, it is implicit in those design standards that the City Engineer has that authority. Associate Planner Tracy said that the adjustment process that Councilor Wilson was referring to was irrelevant to the K value question.

Councilor Wilson summarized his understanding that the design standards they are not intended to cover every circumstance and there is some leeway for discretion. Councilor Wilson said also it was mentioned that the design standards were derived from the Washington County Standards and he could understand that every jurisdiction, especially smaller ones, would not have to "reinvent the wheel" as the AASHTO standards are recognized throughout the country as engineering standards for roads. Councilor Wilson asked for clarification of the relationship between the City of Tigard's standards, Washington County and AASHTO.

Associate Planner Tracy referred this question to City of Tigard Development Review Engineer McMillan. Ms. McMillan referred to the Design Standards document. The preface in that document states that the Washington County Uniform Road Improvement Design Standards have been used as a guide creating the standards. Therefore, the City of Tigard did not adopt the Washington County document "all out" as a standard, but it is used as a guide.

Councilor Woodruff asked about the tree protection steps, which was prepared in November. He inquired if staff believed this was adequate and would meet the concerns. Associate Planner Tracy said staff believes the tree protection steps are adequate because they were prepared by, not only a certified arborist, but in this case, a consulting arborist. Terry Flanagan is well renowned for his ability. Furthermore, Associate Planner Tracy noted that staff has imposed additional conditions of approval to insure that these steps are met by requiring that they be placed on the construction documents and additional steps taken during the building permit process, which is typically the missing link between the subdivision construction and home construction when the lots get turned over to builders. By imposing the conditions staff is recommending, it is insured that the tree protection requirements are passed on from the subdivider/developer to the homebuilders. There is a requirement that an arborist is to be involved throughout the whole process. Councilor Woodruff asked if Associate Planner Tracy believed that these things are being done in good faith and will they be followed? Associate Planner Tracy responded that there has been no tree protection established yet; however, an independent review of the arborist report, in terms of the accuracy of the report, has been verified by the City of Tigard's City Forester. So long as this particular arborist remains an integral part of this process then Associate Planner Tracy advised that, "Yes, I believe it will be followed."

Councilor Woodruff asked if the steps that have been laid out with regard to the tree plan are no less stringent than we would expect of any development? Associate Planner Tracy advised that in this case, because of its high profile and extreme scrutiny, these steps are a little more stringent than most.

- f. Mayor Dirksen closed the public hearing.

g. Council Consideration

Councilor Woodruff commented on the scope of the items of the LUBA remand. He asked if the three City Council members who presided over the initial approval were satisfied?

Councilor Wilson advised that when this matter came through the first time, it was equally controversial – one of three controversial subdivisions that year. The City Council made an error, according to LUBA when Council decided that the Code did not require a tree protection plan. The Council's reason for not requiring a tree protection plan was because the property was a registered wood lot with Washington County and the City of Tigard Code does not require a permit to harvest trees from a registered wood lot. The owners were authorized to cut the trees without permission. Councilor Wilson said that LUBA correctly pointed out that the requirement for a tree protection plan and the need for a tree removal permit are two different things. The City of Tigard Code says that a tree protection plan is required for a subdivision, "period." Councilor Wilson said when he first heard this point was remanded to Council, he was concerned the owner would cut down all the trees because that certainly would have been an option. He said, "I commend the developer for not doing that, but I think that by requiring the tree removal permit, we've satisfied that criteria... The subsequent issue of the landscape requirement has also been met. There are just two other remaining technical issues, in my opinion... I was a little uncomfortable with the ability of the City Engineer to arbitrarily sort of waive a rule or impose one, but I recognize that that's done all of the time... I think you have to sometimes make adjustments for topography and things like that. And, I think that the questions that LUBA has asked or sent back to us... the authority the Engineer has to make those sorts of decisions... I think that we need to determine whether that's been made or not. I think the fourth issue is a technicality.... that's my read on it. I'm satisfied that all counts have been met..."

Councilor Sherwood noted she was also on Council when this matter was considered previously. She noted there were several meetings regarding technical and emotional issues. Councilor Sherwood said she felt the developer had gone "above and beyond" to save and protect the area. She said she "felt that everything has been answered."

Mayor Dirksen said when the issue first came before the City Council, he felt that this type of development was exactly the kind of thing that Mr. Ward spoke about during the Citizen Communication. Because the developer has met all the legal requirements, there was no opportunity

for the City to deny this application outright. Mayor Dirksen noted the City placed 45-50 conditions on the development. When the remand was received from LUBA, he said he was concerned when he read the assignments of error. He believed that most of them, if not all of them, could be to a greater environmental impact if all of the assignments error were addressed in the broadest sense. He said, "meaning the broadest terms of the Tigard Development Code, particularly with regard to the slope angle on the street and the curb-tight sidewalks, which would require a greater amount of fill. Also, the tree issue was one I was concerned that not only this property owner would choose to harvest all the trees before developing, but this decision requiring this kind of a tree protection plan would encourage other property owners who have registered wood lots would also completely harvest their trees before bringing the piece of property up for development. I am still concerned that this could be an outcome of this. But, I am pleased to say that the developer has not chosen to do that. The property owner has not chosen to do that. And, I am also pleased that our staff was able to creatively reconcile and address the other assignments of error without increasing the impact. At this point, I think we have the best possible solution that is available to us to date. I will vote in favor.

Councilor Woodruff said that it looks if as if the proposed resolution will pass. Because of the high profile nature of this, the controversy, and passionate involvement on both sides, he would encourage staff to monitor this closely. To the developer he said it should be "really crystal clear that you're following this to the letter, because it is not only going to be looked at by us, but by other developers and if this doesn't go well, the next time...it's going to be that much harder..."

Councilor Harding said she was in disagreement with some of Engineering's recommendations. She said she understands that the City of Tigard's Engineer has the authority to make changes and to come up with his own conclusions outside of codes and regulations, but in observing this site, she said she still had great concerns about the sag and the grade. She commented about the true cost of fixing it later as opposed to requiring the infrastructure now (i.e., a bridge) or after monitoring to determine if the issues had been addressed. She also noted concerns about safety – whether people would slow down.

Motion by Councilor Wilson, seconded by Councilor Sherwood, to approve Resolution No. 05-10.

RESOLUTION NO. 05-10 -- A RESOLUTION AND FINAL ORDER APPROVING THE ASH CREEK ESTATES SUBDIVISION (SUBDIVISION (SUB) 2003-00010/PLANNED DEVELOPMENT REVIEW (PDR) 2003-00004/ZONE CHANGE (ZON) 2003-00003/SENSITIVE LANDS REVIEW (SLR) 2003-00005/ADJUSTMENT (VAR) 2003-00036/ADJUSTMENT (VAR) 2003-00037) – "REMAND," ADOPTING FINDINGS AND IMPOSING CONDITIONS.

The motion was approved by a majority vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	No
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

11. COUNCIL LIAISON REPORTS

12. NON AGENDA ITEMS

13. EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

14. ADJOURNMENT

Motion by Councilor Woodruff, seconded by Councilor Sherwood, to adjourn the meeting.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

The meeting adjourned at 9:27 p.m.

Catherine Wheatley
Catherine Wheatley, City Recorder

Attest:


Mayor, City of Tigard

Date: 4.12.05

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